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No. 01-229

Supreme Court, U.S.
FILED
SEP 25 2001
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IN THE

Supreme Court of the United States

GREAT LAKES DREDGE & DOCK COMPANY,

Petitioner,

v.

BEYEL BROTHERS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF

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THE QUESTIONS PRESENTED WERE EXTENSIVELY BRIEFED IN THE COURT BELOW

Notwithstanding that the questions presented were raised in the courts below, *Petition for a Writ of Certiorari*, pp. 5-6, 6-7, the Respondent asserts that the Petitioner "never raised in the Eleventh Circuit Court of Appeals that *Stevens v. The White City*, *supra* was improperly applied by the court . . . in their brief, reply brief, or petition for rehearing." *Brief in Opposition*, p. 3. This is incorrect.

One section of the argument advanced in the Eleventh Circuit on behalf of the petitioner was entitled "The burden on [the Petitioner] to prove tower negligence was satisfied through showing an occurrence or damage inconsistent with proper towage coupled with [the Respondent's] failure of explanation." *11th Cir. No. 00-12661*, *Brief for Appellant*, p. 24. This is followed by fourteen pages of argument that *Stevens* had been incorrectly interpreted by the trial court and thus improperly applied. *Id.* at pp. 24-37.

> The trial court, however, at the urging of [the Respondent], **took a different view of *Stevens***, one which placed upon [the Petitioner], as a party claiming on behalf of the tow, the burden or proof unaided by either presumption on inference. "The fact that the [tug] did not arrive at her intended destination with her tow intact does not, by itself, raise an inference of negligence." *(R5-107-9)*

Id. at 26. *11th Cir. No. 00-12661, Brief for Appellant,* p. 26, quoting from the decision of the trial court. App. 12a-13a. (Emphasis supplied.)

In its reply brief, the Petitioner began its argument with the statement "The burden on [the petitioner] to prove tower negligence was satisfied by evidence showing an occurrence or damage inconsistent with proper towage coupled with Brothers failure of explanation." 11th Cir. No. 00-12661, *Reply Brief for Appellant*, p 14. Argument followed. *Id.* at pp. 14-22.

The questions presented for which review is sought clearly were briefed and argued in the court of appeals.

Respectfully submitted,

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